

REMARKS

This paper is submitted in response to the Office Action mailed December 19, 2005. The Applicant respectfully requests that the following Remarks be entered into the official file pertaining to the subject application.

Claims 1-30 are pending with the entry of this paper.

Claims 1-30 stand rejected.¹

Rejection under 35 U.S.C. § 112, second paragraph

At page 2 of the Office Action, the Examiner rejects Claims 28-30 under 35 U.S.C. § 112, second paragraph as being allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Applicant respectfully TRAVERSES the Examiner's rejection and submits the following remarks in response:

There are two separate requirements set forth under 35 U.S.C. § 112, second paragraph:

(A) the claims must set forth the subject matter that applicants regard as their invention; and

(B) the claims must particularly point out and distinctly define the metes and bounds of the subject matter that will be protected by the patent grant.

See MPEP § 2171. The Examiner's focus during examination of claims for compliance

¹ The Office Action summary sheet indicates that claims 1-30 have been rejected; however, no rejection of claims 22-27 is contained or discussed within the substantive portion of the Action, i.e., pages 2 through 6. To further the prosecution of the subject application, the Applicant has responded to the Office Action. However, the Applicant respectfully requests clarification of the status of claims 22-27. If claims 22-27 are indeed rejected, the Applicant respectfully requests the objective merits of such a rejection in the next Action.

with the second requirement under §112, second paragraph should focus on threshold requirements of clarity and precision; however, the Examiner should not reject claims or insist on his own preferences if other modes of expression selected by the Applicant satisfies the statutory requirement. *See* MPEP § 2173.02. Thus, definiteness of claim language must be analyzed in light of:

- (A) The content of the particular application disclosure;
- (B) The teachings of the prior art; and
- (C) The claim interpretation that would be given by one possessing the ordinary

level of skill in the pertinent art at the time the invention was made. *See* MPEP § 2173.02.

In contrast to the requirements under 35 U.S.C. § 112, second paragraph and the guidelines set forth by the MPEP, the examiner rejected claims 28-30 stating, “Claim 28 is written as a Jepson claim, it is not clear if applicant intended that everything prior to ‘the improvement comprising’ to be admitted prior art.” From this statement, it appears that the Examiner did not consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope therefore serving as the notice function required by 35 U.S.C. § 112, second paragraph. *See* MPEP 2173.02.

Independent method claim 28 recites:

In a method for facilitating point of sale operations in a retail enterprise comprising the steps of storing and maintaining inventory data at a central database facility, accessing to said central database facility from at least one remote application facility, and processing real-time data related to a point of sale operation at said at least one remote application facility, the improvement comprising permitting at least one real-time point of sale based change to inventory data at said at least one remote application

facility responsive to said processing of real-time data.

Pursuant to 37 C.F.R. §1.75(e) and MPEP §608.01(m), an independent claim in Jepson form contains a preamble providing a general description and/or structure of all the elements or steps of a claimed combination which are conventional, a phrase such as “wherein the improvement comprises,” and those elements, steps and/or relationships which constitute that portion of the claimed combination which the application considers as the improved portion. **There is no inconsistency between the claimed elements listed above and the specification, and the Examiner has not provided any evidence to the contrary.** Furthermore, the language of claim 28 is such that a person of ordinary skill in the art could interpret the metes and bounds of the claim so as to understand how to avoid infringement. It is clear that each claim element as recited defines the patentable subject matter and the relationships between the claim elements with a reasonable degree of particularity and distinctness. See MPEP § 2173.02. Thus, the rejection of claim 28 under 35 U.S.C. § 112, second paragraph based on the form of the claim is improper and must be withdrawn.

Applicant hereby respectfully requests that the Examiner reconsider his rejection and withdraw the § 112 rejection of independent claim 28. Claims 29-30 depend from independent claim 28. Without regard to the additional patentable limitations contained therein, the Applicant respectfully requests that the Examiner also withdraw the rejections of claims 29-30 under 35 U.S.C. § 112, and allow the same to issue in a U.S. Patent.

Rejection under 35 U.S.C. § 103(a) based on Danielson in view of Beach and Derfler

At pages 2 through 4 of the Office Action, the Examiner rejects Claims 1-21 under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Patent No. 4,972,463 to Danielson, et al. (“Danielson”) in view of U.S. Patent No. 6,084,528 to Beach, et al. (“Beach”) and a publication entitled “How Networks Work” to Derfler, Jr., et al. (“Derfler”).

The Applicant respectfully TRAVERSES the Examiner’s rejection and submits the following remarks in response:

In order for the Examiner to establish a *prima facie* case for obviousness, three (3) criteria must be met. First, there must be some suggestion or motivation, either in the cited prior art references or in the knowledge generally available to those of ordinary skill in the art, to modify the primary reference as the Examiner proposes. Second, there must be a reasonable expectation of success in connection with the Examiner’s proposed combination of the references. Third, the prior art references must disclose or suggest all of the claimed elements. *See* MPEP 2143. The Examiner has failed to establish a *prima facie* case for obviousness because the Examiner failed to satisfy his burden of showing that the prior art discloses or suggests all of the elements of claims 1-22 and, as such, failed to satisfy his burden of showing that there is a suggestion or motivation to one of ordinary skill in the art to modify the primary reference as the Examiner proposes.

The Applicant’s independent, system claim 1 recites, *inter alia*:

a central database facility storing and maintaining data relating to

items to be sold at a point of sale and at least one downloadable user interface; and

at least one application facility coupled to said central database facility via an electronic data network and configured to access said central database facility to downloadably receive said data related to said at least one downloadable user interface during a point of sale transaction, to process said at least one downloadable user interface within a browser application executing within said application facility, and to process said data relating to said items in real-time via said at least one downloadable user interface to permit a real-time point of sale based change to said data relating to said items.

The Applicant's independent, system claim 8 recites, *inter alia*:

a central database management facility storing and managing data related to at least one downloadable user interface form operable within a browser application and to items which may be sold at a point of sale; and

a plurality of client data processing facilities coupled to said central data management facility via an electronic data network, each client data processing system of said plurality of client data processing systems located at a remote point of sale and coupled to said central data management facility via a network connection over said electronic data network, each client data processing facility configured to execute said browser application, to access said central database management facility via said network connection to retrieve and process said at least one downloadable user interface form within said browser application, to access said central database management facility in real time to retrieve data related to at least one of said items to permit a real-time point of sale based change to said data, and to cause said central database management facility to manage said data in real-time about at least one of said items based on said remote point of sale related operation.

The Applicant's independent, method claim 15 recites, *inter alia*:

at a central database facility, storing and maintaining data relating to items to be sold at a point of sale and at least one downloadable user interface;

permitting access to said central database facility to receive said data related to said at least one downloadable user interface;

processing said at least one downloadable user interface within a browser application executing within at least one application facility; and

at said at least one application facility, processing said data relating to said items in real-time via said at least one downloadable user interface

to permit a real-time point of sale (POS) based change to said data relating to said items.

The Applicant's claimed invention provides a point of sale system and method for permitting real time access to consolidated, centrally stored inventory and related data to drive generation and storage of real-time transaction and operation data.

First, the Examiner wrongly bases his rejection on Danielson as the primary reference. Danielson teaches a central management system for a point-of-sale network wherein data from devices within a single facility may be transmitted via a single phone line to a central site (Col. 3, ll. 44-50). The central management system comprises a communications unit 20 coupled with individual devices 21A-N such as ATM machines or POS terminals (Figures 1 and 2; Col. 3, ll. 20-35 and 63-67). At each facility location in the network, a facility's respective communications unit 20 controls the flow of data from the individual devices 21A-N, buffers the data until a dedicated communication channel 24 is ready, and responds to a distributed processor poll from a central site 30 by sending the buffered information (Figure 2; Col. 5, ll. 15-21). The communications unit 20 performs all of the message buffering and queuing of the devices 21A-N, the protocol conversion to and from the devices, error control, data editing and assembly, and message control for routing purposes (Figure 2; Col. 5, ll. 23-30). The central management system continually polls the communications units 20 in the system for an interrupt signal 42 provided by a communications unit 20. The interrupt signal 42 is generated by the communications unit 20 once a block or message is loaded into the memory buffer of the communications unit 20 (Figures 2 and 4; Col. 5, ll. 54-62). Once an interrupt signal is

detected by a poll, buffered data from an in store communications unit 20 is transmitted to the central site (Figures 2 and 4; Col. 5, line 63 – Col. 6, line 13).

It is clear that the Danielson patent teaches and suggests an elaborate software and hardware based point-of-sale network where information is stored locally in a communications unit 20. A central site 30 must poll the network on a regular basis and download data from each in-store unit 20 on a dedicated telecommunication line upon acquisition of the interrupt 42. Because of the polling operation and dedicated communication line, the invention of Danielson suffers from bandwidth issues that prevent integration of individual retail store data with enterprise wide data in real-time to permit real-time changes to such data. **There is no teaching or need in Danielson for a user to establish any real-time communication to access a central database management facility to retrieve data related to inventory to permit a real-time point of sale based change to the data and to cause the central database management facility to manage the data in real-time based on a remote point of sale related operation, as required by independent claims 1, 8, and 15 and no such elements are even suggested or contemplated.** Moreover, one of ordinary skill in the art would not have been motivated to modify the system and method described by Danielson to include the Applicant's claimed system or method, and the Examiner's rejection based upon Danielson as the primary reference is improper.

It is axiomatic, however, that the Examiner acknowledges some of the deficiencies of Danielson on page 2 in the rejection stating:

Danielson et al. shows all of the limitations of the claims except for

specifying real-time communication, the use of a web browser application with control user entry, HTML documents, and peripheral devices including a printer and case drawers, which automatically open during a sale.

See Office Action, page 2. However, neither Beach nor Derfler can supplement these deficiencies and the examiner improperly relies on the teachings thereof. Thus, any rejection of Claims 1, 8 and 15 predicated upon Danielson is improper.

For example, Beach teaches a portable data terminal and communications system for providing information over a wireless network using the portable data terminal. The portable data terminal comprises a wireless bar code reader having a touch-screen CGA or VGA type video display (Figures 2-5; Col. 5, ll. 25-45). The wireless reader communicates with a network 16 through a central host 14 and access points 13A-B (Figure 1; Col. 5, ll. 50-59). Data collected by the central host 14 is processed locally and to the extent the data requires a response, the central host 14 processes information and retransmits data to the wireless readers. In the event the reader's request requires data not stored on the central host 14, the central host 14 retrieves data from external sources or servers 40, 50 through a WAN 30 or the Internet (Figure 1; Col. 6, ll. 1-9). It is clear that Beach teaches and suggests a wireless bar code reader that, upon scanning a product or item, provides product information such as price, product name, nutritional information and video or audio advertisements with regard to the product or to user preferences stored in the central host or in an external source (Col. 7, line 66 – Col. 8, line 13 and Col. 9, ll. 9-55). Thus, Beach teaches providing a user of a wireless reader with product, advertisement, and/or entertainment information via a WAN/LAN or the

Internet. There is, however, no disclosure, teaching or suggestion in Beach for a user to establish any real-time communication to access a central database management facility to retrieve data related to inventory to permit a real-time point of sale based change to the data and to cause the central database management facility to manage the data in real-time based on a remote point of sale related operation, as required by independent claims 1, 8, and 15 and no such elements are even suggested or contemplated. Thus, Beach cannot supplement the deficiencies of Danielson in this regard.

The Derfler publication (page 185) provided by the examiner is a general one page description of the Internet and is equally unavailing to supplement the deficiencies of Danielson. For example, Derfler discloses that “the Internet is an interconnected network based on the TCP/IP protocol...[t]oday, any can subscribe to an...ISP. An ISP typically leases a high-speed connection to the Internet backbone network, and provides lower-speed access to a number of users.” See Derfler, p. 185. While the portion of Derfler provided by the Examiner offers an extremely general overview of the Internet, there is no teaching, disclosure or suggestion in Derfler for a user to establish any real-time communication to access a central database management facility to retrieve data related to inventory to permit a real-time point of sale based change to the data and to cause the central database management facility to manage the data in real-time based on a remote point of sale related operation, as required by independent claims 1, 8, and 15 and no such elements are even suggested or contemplated. Thus, Derfler cannot supplement the deficiencies of Danielson or Beach in this regard.

Danielson, Beach and Derfler, alone or in combination, do not teach, suggest or disclose each and every element of claims 1, 8 and 15. Reconsideration and withdrawal of the rejection of claims 1, 8 and 15 are hereby respectfully solicited.

Claims 2-7, 9-14 and 16-21 are dependent upon independent claims 1, 8 and 15, respectively. Claims 1, 8 and 15 are in condition for allowance. Without regard for the additional patentable limitations contained therein, reconsideration and withdrawal of the rejection of claims 2-7, 9-14 and 16-21 are hereby solicited.

As previously noted, the Office Action summary sheet indicates that claims 1-30 have been rejected; however, no rejection of claims 22-27 is contained or discussed within the substantive portion of the Action, i.e., pages 2 through 6. The Applicant has responded to the Office Action to further the prosecution of the subject application. Claims 22-23, 24-25 and 26-27 are dependent upon independent claims 1, 8 and 15, respectively. Claims 1, 8 and 15 are in condition for allowance. Without regard for the additional patentable limitations contained therein, allowance of claims 22-27 are hereby solicited.

With reference to the discussion above, neither Danielson nor Beach and Derfler disclose, teach or suggest each and every element, alone or in combination, of claims 28-30. Consideration and allowance of claims 28-30 are hereby solicited.

Conclusion

This paper has been submitted in response to the Office Action mailed December 19, 2005. Claims 1-30 remain pending in the application.

The Applicant believes that the Application is in condition for allowance and, as such, it is earnestly requested that claims 1-30 be allowed to issue in a U.S. Patent.

If the Examiner believes that an in-person or telephonic interview with the Applicant's representatives will expedite the prosecution of the subject patent application, the Examiner is invited to contact the undersigned agents of record.

The appropriate extension fees are submitted herewith; however, should any additional fees be necessary in connection with the filing of this paper, or if a petition for extension of time is required for timely acceptance of the same, such a petition is made and the Office is authorized to charge such fees to Deposit Account No. 04-1679.

Respectfully submitted,



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